UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	
VICTOR MORALES, LYTIC FAUNTLEROY, JACOB PABON, RUBEN TARRATS, ADRIAN TOSADO, JOSE RAPALO and KAIRASHAAD JOHNSON	:	CRIMINAL NO. 2015-592-7

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Kairashaad Johnson ("Johnson"), submits this Sentencing Memorandum for use by the Court at the sentencing hearing scheduled to take place in this case on May 23, 2017, starting at 2:00 p.m. at the Edward N. Cahn U.S. Courthouse & Federal Building, 504 W. Hamilton Street, Allentown, PA 18101.

I. INTRODUCTION

On May 21, 2015, at age 20, Johnson took a subordinate role in the armed robbery of the 10th Street Market in the City of Allentown. As a result, he turned 22 in federal custody, on April 7, 2017. Johnson offers no excuses for the robbery, but he was undoubtedly the youngest, least experienced and also least culpable member of the group comprised by his co-defendants. Current research in neuropsychology has shown that the adolescent brain generally does not mature until around 24 years of age.[1] At the time of the offense and even now, Johnson's brain development has likely been slowed by the diagnoses of Bi-Polar Disorder and Schizophrenia confirmed by medical records obtained by defense counsel from mental health treatment providers in Brooklyn, New York and Allentown. While Johnson's mental diagnoses did not lessen his criminal responsibility under the law, the workings of his mind at the time of the offense were undoubtedly clouded by adolescent impulsiveness combined with the unpredictable symptoms of diagnosed mental illness.

Johnson got to know defendant Jacob Pabon in 2015, by running into him at clubs during weekends in Allentown. In discussions with counsel, Johnson remembered Pabon as someone who had things that Johnson lacked, such as a car, an apartment, and money to spend at clubs. Johnson felt more respected and part of something bigger when he was around Pabon and his friends. If Johnson knew then what he knows now, he would have stayed at home with his family.

Pabon suggested the idea of robbing the 10th Street Market, and events unfolded rapidly after that. Johnson could tell he was not really thought of as part of the gang, but went along with it because he needed money. Due to his mental issues, Johnson had difficulty finding work and holding a job. Back in May of 2015 he felt that his life was going nowhere, and he still feels that way: People don't want to hire him even though he finished high school. Recalling the incident, Johnson advised counsel that could tell the people in 10th Street Market were scared, and he is glad that nothing happened to them. He was also scared, and the small amount of money he got from the robbery was not worth it, "not even close."

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[1] See, e.g., Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Courts, The Council of State Governments Justice Center (2015); Map of teenage brain provides strong evidence of link between serious antisocial behavior and brain development (6/15/16) reprinted in Science Daily (5/9/17); Annotated Bibliography of Key Adolescent Development Studies, National Juvenile Defender Center (issued 5/22/15); Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders, Steinberg, Kauffman and Monahan, OJJDP Juv. Justice Bulletin, March 2015.

In recent meetings with counsel, Johnson has indicated that he would like to become an electrician, and hopes that he can learn enough about that trade in custody so that he could qualify for acceptance into an apprentice program after his release. At that point, Johnson will probably join his mother in Brooklyn, New York. When asked why, Johnson responded that there "are more programs for people like me" in New York. It is likely that the divorce of Johnson's parents, given his limited coping skills and background mental illness, was devastating to his sense of balance and belonging.

In summary, Johnson was unable to find adequate support in his family or the community for the mental issues that set him apart from young men in the community who could have provided a good role model. Many young adults (already susceptible to peer pressure to know the "right" people) are not especially open to having friends who suffer from Bi-Polar Disorder and Schizophrenia. As a result, Johnson fell under the influence of hardened criminals who determined that he could be useful in robbing stores.

In counsel's estimation, the robbery of 10th Street Market was similar to an audition – those that ran the gang were giving Johnson a test run (armed only with a BB gun) to see how he would do. Needing money and lacking support in the community, Johnson unfortunately went along with this plan. Hopefully, the sentence imposed by this Court will provide Johnson with a second chance to become a functioning citizen, with a respectable trade and a decent future, despite his mental disabilities.

II. PROCEDURAL BACKGROUND

The Government named Johnson as a defendant in the Superseding Indictment filed in this action on April 14, 2016 (Doc. 24), alleging Johnson's participation in an armed robbery of the 10th Street Market on May 21, 2015. As noted above, Johnson was 20 years old at the time of the alleged robbery, and is now only 22 years of age. In contrast to his co-defendants, the Superseding Indictment charges Johnson with participation in a single armed robbery (it did not involve any discharge of a firearm or abduction of store personnel), and the Government does not claim that Johnson took any leadership or organizational role in any of the robberies alleged.

On April 29, 2016, Magistrate Judge Henry Perkin denied the Government's Motion seeking Johnson's pretrial detention, and he commenced a four-month period of house arrest on electronic monitoring at his father's home, located at 117 N. 17th Street, Allentown, PA 18104 (Doc. 42). Central to the Court's decision in granting house arrest was Johnson's treatment in 2015 for mental illness including bipolar disorder, as detailed by 29 pages of medical records (collectively, the "Mental Health Records") received by counsel from the Woodhull Medical and Mental Health Center, 760 Broadway, Brooklyn, NY 11206 ("Woodhull").

Under Federal Rule of Criminal Procedure 12.2, "a defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk." Fed. R. Crim. P. 12 (a). Based on the Woodhull records and reports from Johnson's parents claiming that Johnson was suffering from bipolar disorder and schizophrenia at the time of the alleged robbery on May 21, 2015, defense counsel filed on July 12, 2016 a Notice of Intent to Assert an Insanity Defense (Doc. 80), after which the Honorable Joseph F. Leeson, by Order entered on September 6, 2016, granted the Government's Motion for Appointment of a Psychiatrist to conduct an examination of Johnson's mental state and capabilities (Doc. 94). Pursuant to the Court's Order, defense counsel obtained additional records of Johnson's psychiatric treatment at Woodhull (all periods of treatment occurred after the robbery date) and contacted a number of psychiatrists and psychologists in the Lehigh Valley. Defense counsel eventually retained Robert M. Gordon, Ph.D. to conduct a preliminary records review.

In the course of proceedings on September 6, 2016, Judge Leeson found Johnson in violation of the terms of his house arrest on electronic monitoring, and committed him to the custody of the United States Marshal (Doc. 93). During the hearing on the circumstances of Johnson's supervised release, Johnson's father advised the Court that he no longer wished to supervise his son, and essentially asked the Court to take him into custody.

Since September 6, 2016, defendant has been held at the Lehigh County Prison, where defense counsel has visited him six times since November 23, 2016. During each visit, Johnson appeared to be in good spirits, and coping well with his incarceration. Johnson indicated to counsel during each prison visit that he understood the nature and quality of the allegations made against him in this action, and was able to engage in productive discussions concerning the guilty plea negotiations that the Government commenced in mid-January of 2017. Counsel devoted two visits to discussing the terms of the "C Plea" that Johnson eventually accepted, pursuant to which he would be sentenced to a period of 45 months in a federal correctional institution, with credit for time served and to be followed by a three-year term of supervised release.

Despite multiple opportunities to reconsider his assent to the terms of the proposed guilty plea agreement, Johnson indicated on February 1, 2017, that he wanted to accept the terms and understood the consequences of doing so. Accordingly, Johnson proceeded to a change of plea hearing on February 14, 2017, where he entered a plea of guilty to Count Eight of the Superseding Indictment, charging him with Hobbs Act robbery and aiding and abetting, in violation of 18 U.S.C. §§ 1951 (a) and 2, respectively. Johnson entered his guilty plea pursuant to Federal Rule of Criminal Procedure 11 (c)(i)(C), subject to an agreement with the Government that a sentence of 45 months imprisonment, three years' supervised release, with fines and restitution to be determined by the Court and a special assessment of $100.00, would be an appropriate sentence in this case. As a further aspect of Johnson's C Plea, the Government will move to dismiss Count Nine of the Superseding Indictment (which charges a violation of 18 U.S. C. § 924 (c)(1) at the time of sentencing. This dismissal will remove Johnson's exposure to 7 years of mandatory consecutive imprisonment under federal law.

III. THE COURT SHOULD IMPOSE THE C PLEA SENTENCE AS AGREED BY THE PARTIES.

Although no longer mandatory, the Guidelines still play an important role in federal sentencing. See United States v. Peugh, ___ U.S. ___, 133 S. Ct. 2072, 2076 (2013), citing United States v. Booker, 543 U.S. 220 (2005). A district court begins "by correctly calculating the applicable Guidelines range," Gall v. United States, 552 U.S. 38, 49 (2007), and then considers the parties' arguments and the factors specified in 18 U.S.C. § 3553 (a). See Gall at 49–50. The district court "may not presume that the Guidelines range is reasonable," and must further explain the basis for its sentence on the record. See id.

The Third Circuit recently observed that "in the ordinary case, the Sentencing Commission's recommendation of a sentencing range will reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." United States v. Boney, 769 F.3d 153, 159 (3d Cir. 2014), quoting Kimbrough v. United States, 552 U.S. 85, 109 (2007) (emphasis supplied). Evidently, a "might" is not a "must." Therefore, "a district court may in appropriate cases impose a non-Guidelines sentence based on disagreement with the Sentencing Commission's views." Boney at 159, quoting Pepper v. United States, 562 U.S. 476, 131 S.Ct. 1229, 1247 (2011).

The Court's task on May 23, 2017 will be to impose a sentence sufficient, but not greater than necessary, to: (A) reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; (B) afford adequate deterrence to criminal conduct; (C) protect the public from further crimes by Johnson; and (D) provide Johnson with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. See 18 U.S.C. § 3553 (a)(2). To reach the appropriate sentence, the Court should consider "the nature and circumstances of the offense and the history and characteristics of the defendant," "the kinds of sentences available," any pertinent policy statement by the United States

Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution, if any. See 18 U.S.C. § 3553 (a)(3)-(7).

The 45-month sentence agreed to by the parties pursuant to Federal Rule of Criminal Procedure 11 (c)(i)(C) satisfies all the applicable criteria of 18 U.S.C. § 3553 (a). 45 months of incarceration followed by three years of supervised release will reflect the seriousness of participating in an armed robbery, send an adequate deterrence message to the community, and protect the public while Johnson engages in rehabilitative efforts in federal custody, including his plan to learn the trade of an electrician.

The Presentence Investigation Report (the "PSIR"), discussing medical records provided to the U.S. Probation Office by defense counsel, confirms that Johnson was voluntarily committed to Woodhull from August 13 through August 26, 2015, at which point his diagnosis was Bi-Polar Disorder. Less than one year later, Johnson was committed by his parents to St. Luke's Hospital in Bethlehem, from July 26 through August 3, 2016, where he again received treatment for Bi-Polar Disorder. See PSIR at ¶¶ 67-70. The Court's sentence should require, consistent with 18 U.S.C. § 3553 (a)(2), that Johnson continue to receive mental health counseling and treatment at the federal facility where he serves his sentence.

As discussed in the Government's Sentencing Memorandum, Johnson has a Criminal History Category of I, based on a Lehigh County ARD adjudication at case number 5290-CR-2013 for possession of marijuana with an offense date of August 13, 2013, when Johnson was 18 years old. The United States Probation Office has calculated Johnson's Total Offense Level as a 23, while the Government has calculated the Total Offense Level as a 22.

Under the Probation Office calculations, Johnson's advisory Sentencing Guidelines range is 46 to 57 months' imprisonment, while under the Government's calculations, his advisory range is 41 to 51 months. Under either set of calculations, the 45-month sentence that the parties have agreed to in the context of a C Plea is reasonable, and the Government agrees. See Government Sentencing Memorandum (Doc. 165) at page 1 (noting that "defendant is a first time violent crime offender, and given his lower culpability relative to his six co-defendants, a sentence of 45 months' imprisonment is an entirely appropriate disposition.").

IV. CONCLUSION

For the reasons stated above, defendant, Kairashaad Johnson, asks the Court to impose sentence on May 23, 2017 consistent with the parties' C Plea agreement.

Respectfully submitted,

By: ______________________________

Richard H. Maurer/Pa. AOPC 70298
FLAMM WALTON
HEIMBACH & LAMM, PC
794 Penllyn Pike, Suite 100
Blue Bell, PA 19422
215-419-1575 Office
215-419-1560 Fax

Counsel for Defendant,
Kairashaad Johnson

May 16, 2017

CERTIFICATE OF SERVICE

Richard H. Maurer certifies that on the date stated below he served a true and correct copy of Defendant's Sentencing Memorandum upon the following persons by the Court's ECF filing and service application:

Eric A. Boden
Assistant United States Attorney
U.S. Attorney's Office
for the Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(tel): 215.861.8327
(fax): 215.861.8618
eric.boden@usdoj.gov

Respectfully submitted,

By: ______________________________

Richard H. Maurer/Pa. AOPC 70298
FLAMM WALTON
HEIMBACH & LAMM, PC
794 Penllyn Pike, Suite 100
Blue Bell, PA 19422
215-419-1575 Office
215-419-1560 Fax

Counsel for Defendant,
Kairashaad Johnson

May 16, 2017